

City Council Introduction: **Monday**, November 18, 2013
Public Hearing: **Monday**, November 25, 2013, at **5:30 p.m.**

Bill No. 13-139

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 13024**, from R-2 Residential District to R-5 Residential District, requested by Charles Earley, on property located at 4926 Garland Street.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 10/30/13
Administrative Action: 10/30/13

STAFF RECOMMENDATION: Approval

RECOMMENDATION: Approval (7-1: Scheer, Corr, Hove, Cornelius, Sunderman, Weber and Lust voting 'yes'; Beecham voting 'no').

FINDINGS OF FACT:

1. This is a change of zone request from R-2 Residential District to R-5 Residential District on property located at 4926 Garland Street, which is the only parcel zoned R-2 on this half block. The adjacent properties to the east and west are zoned R-5. There is R-2 zoning to the north and P zoning to the south. This property was downzoned from R-5 to R-2 in 2005. The adjacent property at 4946 was removed from that downzone at the request of the property owner.
2. The staff recommendation of approval is based upon the "Analysis" as set forth on p.3-4, concluding that although this lot is shown as R-2 in the North 48th Street/University Place Plan, the adjacent lots on this block face are zoned R-5. It is reasonable to have the entire block face in the same zoning district. The request is in conformance with the Comprehensive Plan. The staff presentation is found on p.5.
3. The testimony of the applicant/owner and members of his family is found on p.6-7. The applicant also owns 4946 Garland Street, the adjacent property to the east. The Earley family is interested in developing the property as an apartment complex and believes it will enhance the neighborhood.
4. There was no testimony in opposition.
5. On October 30, 2013, the majority of the Planning Commission voted 7-1 to agree with the staff recommendation of approval (Beecham dissenting). Beecham expressed concern about encouraging the removal of single-family homes in order to change the zoning. The remainder of the Commission found that this is a single lot on a block face that is otherwise zoned differently and it provides flexibility for the owners to continue to make improvements to the neighborhood (See Minutes, p.8).

FACTSHEET PREPARED BY: Jean L. Preister

DATE: November 7, 2013

REVIEWED BY: Marvin Krout, Director of Planning

DATE: November 7, 2013

REFERENCE NUMBER: FS\CC\2013\CZ13024

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT
for OCTOBER 30, 2013 PLANNING COMMISSION MEETING

PROJECT #: Change of Zone No.13024

PROPOSAL: From R-2 Residential to R-5 Residential

LOCATION: 4926 Garland St.

LAND AREA: 10,672 square feet

EXISTING ZONING: R-2 Residential

CONCLUSION: Although this lot is shown as R-2 in the N. 48th Street/University Place Plan, the adjacent lots on this blockface are zoned R-5. It is reasonable to have the entire block face in the same zoning district The request is in conformance with the Comprehensive Plan.

RECOMMENDATION:	Approval
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 10 & West half of Lot 11, Block 118, University Place, located in the SE 1/4 of Section 17, Township 10 North, Range 7 East, Lancaster County, NE

EXISTING LAND USE: Single family dwelling

SURROUNDING LAND USE AND ZONING:

North:	R-2 Residential	Single family dwellings
South:	P Public	University Place Park
East:	R-5 Residential	Vacant lot
West:	R-5 Residential	Multiple family

HISTORY:

April 25, 2005 Change of Zone #05021 for a change from R-5 to R-2 as part of the University Place down zone was approved on the subject property and others by the City Council.

COMPREHENSIVE PLAN SPECIFICATIONS:

The key to both developing and existing urban neighborhoods is land use diversity. For existing neighborhoods the diversity is often already in place, but efforts must focus on maintaining this balance and variety. (p. 7.1)

In existing neighborhoods, preservation, maintenance, and rehabilitation of existing housing should continue to be the focus. Infill and redevelopment needs to respect the street pattern, block sizes, and development standards of the area, such as parking at the rear and porches, windows, and doors on the front street side. (p. 7.1)

Distribute and preserve affordable housing throughout the community to be near job opportunities and to provide housing choices within existing and developing neighborhoods. (p. 7.2)

Provide a wide variety of housing types and choices for an increasingly diverse and aging population. (p, 7.2)

Encourage increased density of existing apartment complexes and special needs housing where there is land available for additional buildings or expansions. (p. 7.9)

Detailed strategies for existing neighborhoods:

Encourage a mix of compatible land uses in neighborhoods

Encourage a mix of housing types all within one area.

Encourage additional density of apartment complexes and special needs housing on open adjacent land areas.

From the North 48th Street/University Place Plan June 2004

For University Place to realize its potential as a unique urban district, it must offer a strong and stable residential environment. (p.73)

High density residential zoning has encouraged conversion of single-family structures or insertion of multi-family buildings on relatively small sites, greatly changing the personality of the neighborhood. (p.74)

Because different parts of University Place have different occupancy characteristics, an overall, "one size fits all" strategy is really not appropriate. Instead, this Plan recommends a development and investment program, based on the housing configuration and occupancy characteristics of each block face. (p.75)

Multi-Use/Rental Dominant: These blockfaces include a combination of single-family and multi-family properties, but as-built rental structures typically dominate. The desired outcome on blockface will include both single-family and multi-family/rental properties. A majority of the frontage, defining the character of the block, will be multi-family/rental properties. (p.76)

Rental Focus: The character of these blocks is almost entirely rental/multi-family. As a result, the projected outcome on blockface will be primarily multi-family/renter occupied.

Proposed zoning map identifies the subject property as R-2, Residential (p.98)

TRAFFIC ANALYSIS: Garland St. is a local street.

PUBLIC SERVICE: Huntington Elementary is the nearest school.
The nearest fire station is located at N. 3rd St. and Holdrege St.

ANALYSIS:

1. This request is for a change of zone from R-2 to R-5 at 4926 Garland St.
2. The adjacent properties to the east and west are zoned R-5. There is R-2 zoning to the north and P zoning to the south. The P zoning is for University Place Park. The applicant's property is the only parcel zoned R-2 on this half block.

3. The subject property was downzoned from R-5 to R-2 as part of the University Place downzone approved in April 2005. The adjacent property, 4946 Garland St, to the east was also proposed to be changed from R-5 to R-2, but was removed from the downzone at Planning Commission at the request of the property owner.
4. Any new building will have to meet the Neighborhood Design Standards. Standards include, but not limited to, that new buildings shall provide at least two openings (combination of windows or doors) per story oriented to the street, utilize a roof type and pitch commonly found within the same and facing block front, no parking is allowed between the building and the front property line,
5. The N. 48th Street/University Place Plan identifies that the projected outcome on blocks that are almost entirely multi-family will continue to be multi-family. The proposed zoning map in the Subarea Plan identifies this property and the adjacent property to the east as R-2.
6. The N. 48th Street/University Place Plan was approved in June 2004 before the actual neighborhood downzone done in April 2005. As a result the lot to the east was not rezoned to R-2 as proposed in the Subarea Plan .

Prepared by:

Tom Cajka
Planner

DATE: October 10, 2013

APPLICANT: Charles Earley
5036 Garland St.
Lincoln, NE 68504
402-438-2234

OWNER:/CONTACT: same as applicant

CHANGE OF ZONE NO. 13024

PUBLIC HEARING BEFORE PLANNING COMMISSION:

October 30, 2013

Members present: Scheer, Beecham, Corr, Hove, Cornelius, Sunderman, Weber and Lust.

Staff recommendation: Approval.

There were no ex parte communications disclosed.

This application was removed from the Consent Agenda and had separate public hearing at the request of Commissioner Beecham.

Staff presentation: **Tom Cajka of Planning staff** presented the proposal for a change of zone on one lot from R-2 to R-5 located between 49th and 50th Streets on the north side of Garland. There is R-5 zoning on each side of the lot in question. There is R-2 zoning to the north and P Public zoning to the south, including a park. A large portion of this neighborhood was downzoned in 2005 from R-5 to R-2. The corner lot (next to the lot in question) was taken out of the downzone and remained R-5 at that time. Thus, there is one little piece of R-2 in that half block.

Beecham noted that the applicant mentioned in the application letter that they hope to use the corner and the lot in question together. The corner lot was exempted from the downzone, at which time it had a single-family house. Cajka believes there was a demolition permit issued in May of 2006, which was after the downzoning; however, the corner lot is zoned R-5. This applicant did not own the property at that time.

Corr inquired whether the neighborhood association was contacted. Cajka stated that they would have received notice from the Planning Department. He did not know whether the owner contacted the neighborhood association. Three contacts in the University Place Neighborhood Association received notice from the Planning Department.

Weber inquired about the reason for the previous downzone. Cajka explained that back in 2005, there were a lot of older neighborhoods that wanted to protect the established single-family areas and prevent either single-family homes being changed to duplexes or coming in and tearing down several houses for apartments. R-2 does allow duplexes; however, it depends on the size of the lot.

Beecham asked whether density was an issue during the downzone. Cajka acknowledged that density was an issue in 2005. However, the thoughts about density have since changed somewhat.

Beecham sought confirmation that the downzone application went to City Council. Cajka confirmed; however, the corner lot was exempted.

Proponents

1. Chuck Earley, 5219 Garland Street, testified as the applicant and owner. He believes this change of zone will improve this area of Garland Street. His family has done a lot in the University Place neighborhood in the last 18 years, e.g. moved houses off of Garland that were condemned. An apartment/4-plex was built at 49th & Walker where an older house was removed; one of the houses was condemned, so he moved it off of Garland to 57th and R, and he lived in it for three years; another house in disrepair was moved off of Garland to 51st & Fremont, and was purchased by a family friend; the last house moved was at 4946 Garland, just east of the subject lot, 4926 – it was moved two blocks down on Garland. All of these houses were in need of repair. His son bought 52nd & Garland eight years ago. The Earley family is part of the neighborhood. They want to be the best neighbors they can.

Earley went on to state that the apartments are very nice and well-maintained; they are not trouble apartments; he was instrumental in getting N. 51st Street paved between Leighton and Garland, and paid a large percentage of the cost; he was also instrumental in getting street lights installed in the 52nd & Garland area. He wants to clean this lot up and improve the neighborhood.

Earley submitted that this area needs some stability; the R-5 zoning is appropriate because there is R-5 on the east and R-5 on the west; R-2 between two R-5's at this location could be a real problem. He no longer has rental houses because they are more of a problem with more liberties.

Earley reiterated that this rezoning is meant to stabilize the area. It needs to be R-5. Earley was able to retain the R-5 on the corner lot because he bought it for multi-family living. The block face needs to be the same.

Beecham wondered why rentals are more difficult. Earley suggested that most of the Wesleyan students know each other. If the house is a rental, those tenants will know everyone in the apartment on the corner. He believes it has the potential to become a party house. It is difficult to control a house in this location close to an apartment with tenants on each side.

2. Mike Earley, 5203 Garland, testified in support. He pointed out that it has been recommended that the house at 4926 be demolished. However, the accountant advised against tearing it down immediately. To this date, his family has not entered the house because of the stench and bug infestation. It has been broken into by homeless at least three times and has recently been a victim of graffiti. He wants the neighborhood to be safe and clean for raising their children. According to the N. 48th Street plan, this property should be upzoned back to R-5 to stabilize the area and clean it up with a new quality building on the property. It will never be an owner-occupied home being between two apartment complexes. It will have a tendency to become a party house.

Corr asked whether 4926 was owner-occupied previously. Earley acknowledged that it was owner-occupied. There was an elderly lady who did not maintain the house and she had three or four dogs and cats.

Corr asked Earley whether he contacted the neighborhood association. Earley stated that he did not know who to contact. When they first moved into the neighborhood, they received an invitation to one meeting but have not been invited again for seven years.

Beecham asked if the applicant plans to build an apartment on the corner lot. Earley responded that it was their intention to build a new complex. He advised that the house on the corner lot was not demolished. The demolition permit was pulled to remove the garage and the house was moved to 52nd and Garland.

Beecham pointed out that the North 48th Street plan was actually in place before the downzoning.

3. Nancy Earley, 5219 Garland, testified in support. They purchased 4926 Garland on September 20, 2013. She suggested that cars parked on the street is usually a reason to object to zoning changes. She believes that if this rezoning occurs, there would be no more tenant parking on the street than there is today. The 4926 house has two bedrooms on the main floor and one in the basement, which is nonconforming. Three bedrooms would likely mean three cars – one in the driveway and one to two on the street. If the zoning is changed, they could remove the 4926 house and might be able to build four 2-bedroom units. The code for street parking for four units is seven, leaving one tenant car on Garland or on N. 50th Street. Even if five or six more units could be built, it would be the same, i.e. one tenant car in the street.

Earley sees the parking issue as a wash with the big advantage being a more stable and controlled environment in the immediate area. If logic rules today, this property will be rezoned to R-5. It is a win-win for the owners and for the neighborhood.

There was no testimony in opposition.

Staff questions

Corr inquired as to who was responsible for creating the North 48th Street plan. Cajka advised that the Urban Development Department was in charge of the creation of the North 48th Street plan. It is an attachment to the 2040 Comprehensive Plan. It was not updated as part of the downzone.

Beecham inquired about the density that would be allowed as single property or two properties together. Cajka advised that R-5 allows single-family, duplex, townhomes, and multi-family, depending on the amount of land and parking requirements. If they did four units, the requirement is 1.75 stalls per unit, requiring seven off-street parking spaces. The parking is determined by number of units, not the area. The maximum density with the two lots together as R-5 zoning allows 1,100 sq. ft. of lot area per unit, setting aside land area for parking. It is hard to say how many units could be built because they would have to figure the land area and get the off-street parking required.

Beecham inquired about design standards for the apartment buildings because the apartment buildings to the west do not have any windows or doors facing the street. Cajka acknowledged that any new construction now would require compliance with the neighborhood design standards, which is a door and two windows facing the street, with parking in the back.

ACTION BY PLANNING COMMISSION:

October 30, 2013

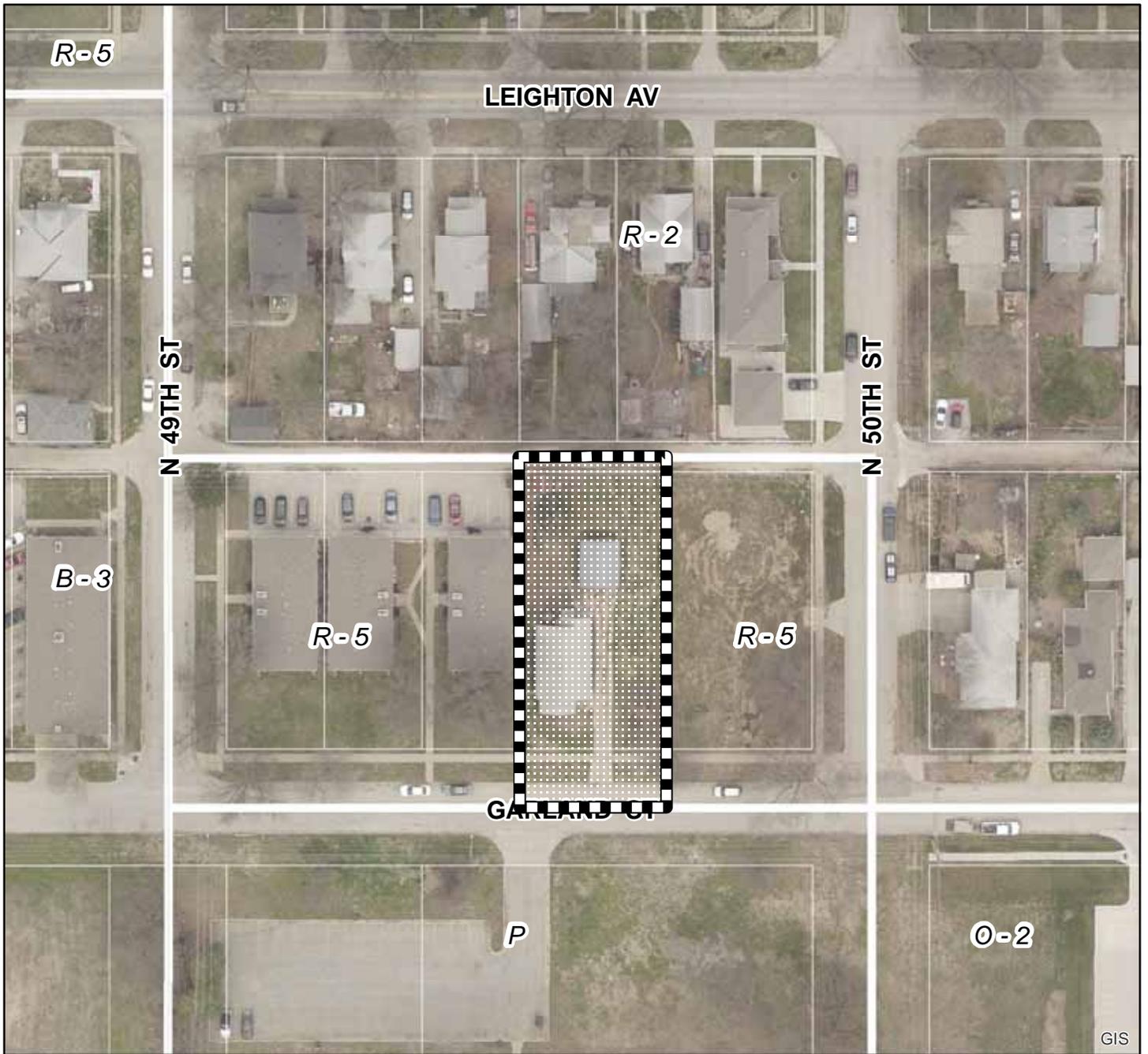
Hove moved approval, seconded by Corr.

Beecham expressed concern that the neighborhood association is not present at this hearing, and that is a concern because this was a downzoning that was worked on for quite some time, approved by the Planning Commission and unanimously approved by the City Council. She is uncomfortable changing it without hearing from both sides. Another concern is that part of the staff report indicates that half of the block already has apartments so we should get rid of the single-family house. Originally, there was a house on it. She does not want to set a precedent of tearing down a single-family house to get the zoning. She appreciates that the house was moved, but it introduces the whole question of whether we are encouraging people to get rid of the single-family housing stock in order to change the zoning for apartments. Just because it is an apartment does not mean it won't be a party house. She believes a single-family home could be a great addition to the neighborhood.

Cornelius also shares some of the same concerns as Beecham. We are dealing with the result of a downzoning process. This is a complicated situation, and more complicated because through the process of the downzone we wound up with this half block being mixed zoning. He does not believe approving the change of zone to R-5 invalidates the message generated by that original downzone because we are talking about a single lot on a block face that is otherwise zoned differently. He stated that he shares the concerns that a rental house has a set of problems and complicating factors that are different from multi-unit housing, which is more closely regulated.

Lust believes this is appropriate rezoning. It does not make sense to have R-2 in the middle of a block next to R-5. It provides flexibility for the owners to make vast improvements and continue their efforts toward improvement of the neighborhood, which she wholeheartedly applauds.

Motion for approval carried 7-1: Scheer, Corr, Hove, Cornelius, Sunderman, Weber and Lust voting 'yes'; Beecham voting 'no'. This is a recommendation to the City Council.



GIS

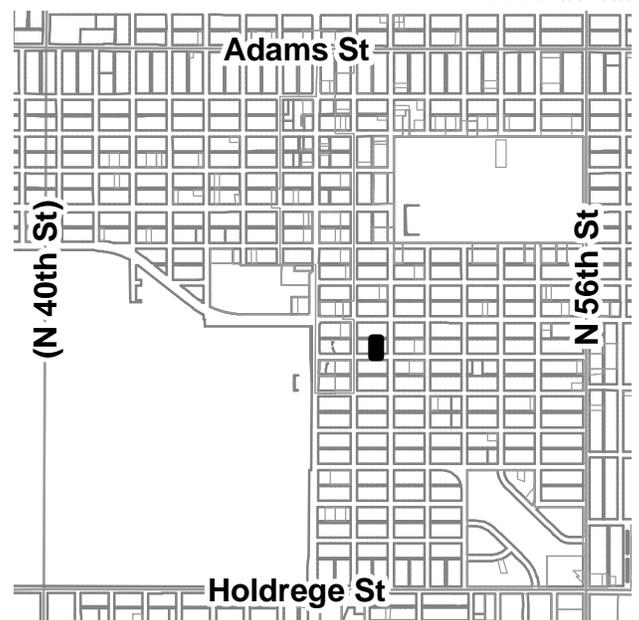
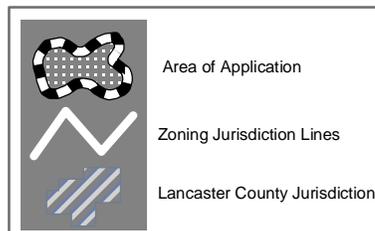
2013 aerial

Change of Zone #: CZ13024
N 49th & Garland St
R-2 to R-5

Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile:
 Sec.17 T10N R07E



RECEIVED

SEP 24 2013

Lincoln/Lancaster Co.
Planning Department

Chuck & Nancy Earley

5219 Garland Street
Lincoln, NE 68504
Phone: (402) 438-2234

September 20, 2013

To: Planning Department

FM: Chuck & Nancy Earley

**RE: Request to change Zoning for property located at:
4926 Garland Street, Lincoln, NE 68504**

We request that the zoning for the above referenced address be changed back to it's original zoning: R5. My wife and I, and one our son's live on Garland Street. We also own the lots that make up 4946 Garland, and now own the house and lots that make up 4626 Garland Street.

We are planning on building another multi-family housing unit on these three lots, if the zoning can be changed back to it's original: R5. There is also a possibility that we would build a Dementia Care Unit on these 3 lots, but more research is needed on our part before that idea is pursued.

We own, operate, and maintain three other multi-family units in the area. They are located at: 2400 North 49th Street, 5036 Garland Street, and 2400 North 51st Street. For each of these three locations, we cleaned up and improved the immediate area with our construction.

We live and work in the University Place neighborhood, and would like to think that we have earned the respect of our neighbors. Thank you for your consideration of this request.

Earley
Nancy Earley

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